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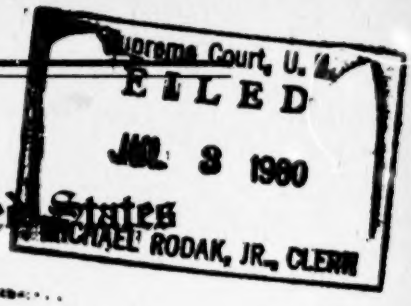

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Petitioner,

v.

INVESTMENT COMPANY INSTITUTE,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF A. G. BECKER INCORPORATED, *AMICUS CURIAE*

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THE INTEREST OF A. G. BECKER INCORPORATED

In 1933, responding to the well-documented securities market abuses and excesses of commercial banks, and again in 1956, 1966 and 1970, Congress unambiguously prohibited commercial banks directly or indirectly from entering into, or engaging in, the securities business.

Despite the ac ption of such statutory limitations, however, commercial banks repeatedly have attempted to obtain, and federal banking regulators all too frequently have attempted to grant, administrative approbation for bank efforts to circumvent applicable banking law strictures.[1]

The instant case is, unfortunately, a prime example of this ongoing effort to rewrite an important Congressional mandate by the use of administrative fiat; here, the Board of Governors of the Federal Reserve System (the "Board") has exalted form over substance by authorizing commercial banks to form nonbank affiliates in order to engage *indirectly* in conduct commercial banks are outlawed from pursuing *directly*.

As a registered broker and dealer in securities, A. G. Becker Incorporated ("A. G. Becker") is directly and adversely affected by such Board efforts to reshape the

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[1] *See, e.g., Investment Company Institute* v. *Camp*, 401 U.S. 617, 639 (1971) (holding invalid a regulation of the Comptroller of the Currency (the "Comptroller") authorizing national banks to operate mutual funds); *Ass'n of Bank Travel Bureaus, Inc.* v. *Board of Governors*, 568 F.2d 549, 550 (C.A. 7, 1978) (bank holding companies may not operate travel agencies); *Nat'l Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1241 (C.A. D.C., 1975) (holding invalid that part of the Board's ruling permitting bank affiliates to provide nonfinacially related courier services); *Arnold Tours, Inc.* v. *Camp*, 472 F.2d 427, 438 (C.A. 1, 1972) (holding invalid the Comptroller's regulation permitting national banks to operate travel agencies); *Saxon* v. *Georgia Ass'n of Independent Ins. Agents, Inc.*, 399 F.2d 1010, 1016 (C.A. 5, 1968) (holding invalid the Comptroller's ruling permitting national banks to act as insurance agents in places of over 5,000 population); *Baker, Watts & Co.* v. *Saxon*, 261 F. Supp. 247, 252 (D. D.C., 1966) *affirmed sub nom., Port of New York Authority* v. *Baker, Watts & Co.*, 392 F.2d 497, 504 (C.A. D.C., 1968) (holding invalid the Comptroller's ruling permitting national banks to underwrite municipal revenue bonds).

language and meaning of the Banking Act of 1933[2] and related banking legislation. A. G. Becker, in addition to providing a broad spectrum of traditional investment banking services, is one of this Country's largest commercial paper underwriters and dealers, assisting major corporate issuers in raising short-term capital by selling their commercial paper securities to various institutional investors. Although the underwriting of commercial paper securities traditionally has been performed by investment bankers (*but never previously by commercial banks*), at least one commercial bank subject to the Board's jurisdiction has, for the first time, commenced underwriting commercial paper in contravention of the prohibitions of the Glass-Steagall Act.

Consistent with its general approach toward the enforcement of the Glass-Steagall Act, the Board has taken no action for almost two years on two petitions seeking Board action to halt this underwriting of securities by commercial banks;[3] indeed, notwithstanding the plain language of the Glass-Steagall Act, and despite the fact that commercial banks had, theretofore, never underwritten commercial paper, the Board's chief legal officer has publicly opined that the underwriting of commercial

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[2] Often referred to as the Glass-Steagall Act, the Banking Act of 1933 is codified at various sections throughout Title 12 of the United States Code. In terms, the prohibitions of the Glass-Steagall Act apply to national banks but, insofar as is relevant here, they also are expressly made applicable to state member banks of the Federal Reserve System. *See* 12 U.S.C. §335 (1976).

[3] A. G. Becker's petition to the Board is predicated, among other things, on Board procedures set forth in 12 CFR §§227.1, 227.2, and 262.3 (1980). Under these complaint procedures, the conduct cited need not be illegal to warrant proscription by the Board as an "unfair" or "deceptive" banking practice. 41 *Fed. Reg.* 44361 (Oct. 8, 1976).

paper securities is "incidental to the business of banking," and should not be inhibited.[4]

In this regard, the Board staff's opinion regarding the underwriting of commercial paper securities by banks is merely the latest in a series of conflicting and confusing administrative pronouncements from the Board—pronouncements that often conflict with each other as to the appropriate application of governing legal principles, but which are remarkably consistent in expanding the number of services commercial banks are authorized to perform.[5]

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[4] Legal Division of the Board of Governors of the Federal Reserve System, *Commercial Paper Activities of Commercial Banks: a Legal Analysis*, pp. 4-6 (Jun. 28, 1979) [hereafter cited as "Legal Analysis"].

[5] Thus, for example, in 1977 the staff of the Board issued a study encouraging commercial banks to engage in the private placement of unregistered investment securities. *See* Federal Reserve Board Staff, *Commercial Bank Private Placement Activities* (1977). In that study, the Board had to determine, *inter alia*, whether commercial bank private placement activities constituted the "underwriting" of securities, since the "underwriting" of securities by a bank is an activity unquestionably proscribed by the Glass-Steagall Act. *Id.* at 87. In holding that banks *could* engage in such private placement activities without violating the Glass-Steagall Act, the Board concluded that the private placement of securities is not "underwriting" within the meaning of the Glass-Steagall Act, because bona fide private placements do not constitute "underwriting" within the meaning of the federal securities laws adopted at the same time as the Glass-Steagall Act. In reaching its decision, the Board noted that, where securities-related terms are defined in the federal securities laws, but the same terms are not defined in the Glass-Steagall Act, "Congress' use of the same terms in the two measures suggests that the Securities Act [of 1933] is a compelling analogy." *Id.* at 89.

Two years later, however, the Board's staff authorized banks to underwrite the distribution of commercial paper based, in part, upon the conclusion that commercial paper is not a "security" for purposes of the Glass-Steagall Act (which does not define the term "security"), even though commercial paper is within the definition of the term "security" as set forth in Sections 2(1) and 3(a)(3) of the Securities Act, 15 U.S.C. §§77b(1) and 77c(a)(3) (1976). Legal Analysis at 15 n. 34.

This case, therefore, presents a question of significance and importance to A. G. Becker—that is, whether the Glass-Steagall Act, and the interrelated proscriptions of the Bank Holding Company Act, may properly be interpreted by the federal banking agencies so as to endorse and encourage commercial banking activities Congress sought to prohibit. Less than a decade ago, this Court noted that the terms of the Glass-Steagall Act could not be ignored or eviscerated by those government agencies charged with the administration of that statute. *Investment Company Institute* v. *Camp*, 401 U.S. 617 (1971). A. G. Becker respectfully submits this brief, *amicus curiae*, in support of respondent, to express its view that this Court's prior teachings, and Congress' unmistakeable admonitions, should be applied to prevent the Board from eroding the protections and proscriptions of the federal banking laws.[6]

QUESTION ADDRESSED

Did the Board of Governors of the Federal Reserve System exceed the Board's limited statutory authority when it promulgated rules permitting commercial banks, either directly or through specially-created nonbank affiliates, to engage in conduct expressly prohibited by the Banking Act of 1933?

STATEMENT[7]

1. *The Challenged Regulation and Interpretive Ruling.* Effective February 1, 1972, the Board issued a

[6] The parties have consented to the filing of this brief. Copies of letters indicating the parties' consent are attached hereto as Appendix A.

[7] Since a full statement of the facts has been set forth in the brief of the respondent, we have not restated the facts here, but rather have set forth only those facts salient to the discussion that follows.

regulation authorizing any bank holding company and both its bank and nonbank subsidiaries to serve as an investment adviser to any and all investment companies, including open-end investment companies.[8] Because the scope of an investment adviser's services under the Board's rule could include the authority to organize, control, operate or manage any investment company,[9] the Justice Department and the Investment Company Institute ("ICI") opposed the Board's determination on the ground that such activities, if engaged in by banks or their affiliates, would violate the Glass-Steagall Act (Pet. App. 6a-7a).[10] Recognizing that "the Glass-Steagall Act provisions . . . [are] applicable to a holding company's activities as an investment adviser," but unwilling to rescind its regulation, the Board attempted to resolve the Glass-

[8] 12 CFR §225.4(a)(5)(ii) (1980). An investment company utilizes a pool of funds contributed by its shareholders for the sole purpose of investing in "the securities of other corporations, and issues securities of its own." *United States* v. *Nat'l Ass'n of Securities Dealers, Inc.*, 422 U.S. 694, 697 (1975) (footnote omitted). This pool of funds is obtained through the public distribution (and, oftentimes, periodic sales) of the company's securities to the investing public. Each share of an investment company represents a fractional interest in the company's portfolio of securities. *Id.* at 698. By virtue of the Investment Company Act of 1940, investment companies are either open-end companies or closed-end companies. As defined in that Act, the sole difference between the two types of investment companies is that an open-end company (often called a "mutual fund") stands ready to issue and redeem its shares on a continuous basis, 15 U.S.C. §80a-5(a)(1) (1976), while a closed-end company's shares are traded in the open market. 1 Frankel, *The Regulation of Money Managers* 341 (1978).

[9] The Board's determination authorized bank holding companies to perform any and all functions performed by an investment adviser, including those functions within the purview of Section 2(a)(20) of the Investment Company Act, 15 U.S.C. §80a-2(a)(20) (1976).

[10] References to the Appendix filed in this Court with the Petition for a Writ of Certiorari are cited as "Pet. App. ."

Steagall Act problems engendered by its expansive rules through the device of an interpretive ruling.[11]

In terms, the Board's rules permit bank holding companies *and* their *bank* as well as nonbank subsidiaries to serve as investment advisers to *any* investment company.[12] In its interpretive ruling, the Board purported to retract so much of its rules as permitted any of the entities subject to its jurisdiction to serve as advisers to *open-end* investment companies;[13] subsequently, the Board also "disclaim[ed]" that its rule was meant to apply to banks.[14] These patching efforts, however, have proven ineffectual—banks apparently continue to sponsor investment companies in reliance upon the language of the Board's rules,[15] and several of the investment companies so advised are conceded by the Board "technically" to be open-end funds.[16]

2. *The Investment Company Institute's Challenge to the Board's Regulation and Interpretive Ruling.* In response to the ICI's petition for judicial review of the

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[11] 12 CFR §225.125(b) (1980), *adopted in* 37 *Fed. Reg.* 1464 (Jan. 29, 1972).

[12] 12 CFR §225.4(a)(5)(ii) (1980). The term "bank holding company" is defined for purposes of the Board's rule to include both types of subsidiaries. 12 CFR §225.125(c) (1980).

[13] 12 CFR §225.125(f) (1980).

[14] *See* Pet. App. 22a.

[15] As the ICI points out in its brief, five of the ten entities currently sponsoring closed-end investment companies are banks, not holding companies or nonbank affiliates (Br. at 17-18, *citing* Weisenberger, *Investment Companies Service*).

[16] Pet. App. 59a. Since even the Board apparently concedes that its rule is *per se* invalid to the extent it authorizes *banks* to serve as investment advisers to *any* investment company, and to the extent it authorizes nonbank affiliates to advise *open-end* investment companies, in this brief we discuss only that aspect of the Board's rule that authorizes a bank holding company to serve as an investment adviser to a closed-end fund.

Board's action,[17] a unanimous Court of Appeals for the District of Columbia Circuit vacated the challenged regulation and interpretive ruling (Pet. App. 50a). The court of appeals noted that the Glass-Steagall Act and the Bank Holding Company Act were designed to achieve a single goal—the divorce of commercial banking from the securities business—a goal accomplished by the Glass-Steagall Act's proscriptions on the activities of commercial banks, and the Bank Holding Company Act's complementary restrictions on the activities of nonbank affiliates of commercial banks (*id.* at 28a-29a).

Noting that Congress did not perceive "that the securities activities of bank holding companies or their nonbank affiliates were any less insidious than those of banks themselves or of firms with which banks were affiliated directly rather than through a holding company parent" (*id.* at 26a), the court examined the language and legislative history of the Bank Holding Company Act and found that that Act was "designed to further the Glass-Steagall Act's overarching policy . . . of divorcing investment from commercial banking" (*id.* at 30a, footnote omitted).

In sum, the court's examination of both the Glass-Steagall Act and the Bank Holding Company Act led it inexorably to conclude that, since the Glass-Steagall Act was first enacted, Congress has continuously maintained a forceful policy of preventing the evils and abuses that arise from the involvement of commercial banks in the securities business (*id.* at 32a, 44a). The court concluded that, had Congress intended to eviscerate the protections of the Glass-Steagall Act by permitting banks to funnel their

[17] The history of the Investment Company Institute's challenges to the Board's regulation and ruling is set forth in the ICI's brief herein, at pp. 6-10.

securities activities through nonbank affiliates, Congress surely would have stated so expressly in the Bank Holding Company Act. The Board's petition for a writ of *certiorari* ensued.

INTRODUCTION AND SUMMARY

National and state member banks, which may engage only in those activities authorized by law, are forbidden by the Glass-Steagall Act from engaging in the securities business, a business Congress has expressly declared includes the sponsorship, operation and management of investment companies. *Investment Company Institute* v. *Camp*, 401 U.S. 617, 629-630, 635-636 (1971). And, this prohibition against banks performing investment advisory services applies whether banks propose to do so for open-end or closed-end investment companies, since the business of both types of companies is defined identically in the Investment Company Act of 1940 to constitute investing, reinvesting and trading in securities—in other words, the securities business.

Despite its recognition of these unmistakeable implications of the Glass-Steagall Act, 12 CFR § 225.125(b) (1980), the Board has effectively ruled that banks may do indirectly what they are prohibited from doing directly; the Board has authorized national and state member banks to utilize the 1930's-discredited device of securities affiliates in order to circumvent the Glass-Steagall Act's injunction that banks may not organize, sponsor, or manage closed-end investment companies. But, the plain meaning of Sections 16, 20, 21 and 32 of the Glass-Steagall Act leaves no room for doubt that Congress "separate[d] *as far as possible* national and [Federal Reserve System] member banks from [securities] affiliates of *all* kinds," S. Rep. No. 77, 73d Cong., 1st Sess. 10

(1933) (emphasis supplied), a conclusion this Court reached and endorsed less than a decade ago. *Investment Company Institute* v. *Camp, supra*, 401 U.S. at 629, 635. There is thus no basis for the Board's argument that, by negative implication, Congress intended to permit by indirection what this Court held Congress has so painstakingly "abolish[ed]." *Id.* at 629.

Nor can the Board sustain its action by reference to the Bank Holding Company Act. That Act was designed to reinforce and supplement the Glass-Steagall Act, not to provide a vehicle for its evisceration. Conduct otherwise illegal cannot, and does not, constitute either banking, an activity closely related to banking, or a proper incident of banking, particularly where, as here, the Board itself concedes (Br. 31-32) that the precise "conflicts of interest and unsound banking practices" that prompted Congress to adopt both the Glass-Steagall Act and the supplementary Bank Holding Company Act could be engendered by the practices the Board's ruling seeks to encourage and foster.

DISCUSSION

THE GLASS-STEAGALL ACT, WHICH SEPARATES COMMERCIAL BANKING FROM THE SECURITIES BUSINESS, PROHIBITS A BANK FROM DIRECTLY OR INDIRECTLY SERVING AS AN INVESTMENT ADVISER TO ANY INVESTMENT COMPANY.

When Congress enacted the Glass-Steagall Act, it "separate[d] *as far as possible* national and [Federal Reserve System] member banks from [securities] affil-

iates of *all* kinds."[18] Thus, as expressly embodied in several of the provisions of the statute, Congress decreed that investment banking and commercial banking should be carried out separately by different, *and unrelated*, institutions. Since 1933, Congress has not adopted any statute which, in terms or otherwise, modifies, alters or abrogates this separation between commercial and investment banking, a conclusion effectively conceded by the petitioner.[19]

The unquestioned effect of the Board's rules and interpretive ruling, however, is to permit banks, through specially-created nonbank affiliates, to enter the securities business, despite the fact that such a fundamental change in national policy must be addressed to, and effected by, the Congress, not the Board. *See, e.g., Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 578-579 (1979); *Securities and Exchange Commission* v. *Sloan*, 436 U.S. 103, 116-117 (1978). As it has had to do on prior occasions, this Court should reaffirm the continuing vitality of the Glass-Steagall Act, and enforce its restriction of commercial banks to the business of banking.[20]

A. The Plain Language of the Glass-Steagall Act Prohibits Banks from Organizing, Sponsoring, or Managing Any Investment Company

In construing the Glass-Steagall Act, as with any statute, it is well-settled that the starting point is the

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[18] S. Rep. No. 77, 73d Cong., 1st Sess. 10 (1933) (emphasis supplied). *See also*, 77 Cong. Rec. 3835 (1933) (Remarks of Rep. Steagall); *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 629, 635.

[19] *See* p. 7 and n. 16, *supra*.

[20] *See Board of Governors* v. *Agnew*, 329 U.S. 441 (1947); *Investment Company Institute* v. *Camp*, *supra*.

statutory language itself.[21] Here, the plain language of the Glass-Steagall Act evidences Congress' intent to preclude banks from organizing, sponsoring, or managing any investment company.

The Glass-Steagall Act contains two interrelated provisions that operate to preclude banks from engaging in the securities business: Section 16, among other things, prohibits banks from underwriting or dealing for their own accounts in securities and stocks, subject to very circumscribed limitations not applicable here;[22] and, Sec-

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[21] *See, e.g., Aaron* v. *Securities and Exchange Commission*, 48 U.S.L.W. 4609, 4613 (U.S., Jun. 2, 1980); *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 48 U.S.L.W. 4658, 4659 (U.S., Jun. 9, 1980); *Chiarella* v. *United States*, 100 S. Ct. 1108, 1113 (1980); *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 16 (1979); *Touche Ross & Co.* v. *Redington, supra*, 442 U.S. at 568; *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551, 558 (1979); *Securities and Exchange Commission* v. *Sloan, supra*, 436 U.S. at 111; *Santa Fe Industries, Inc.* v. *Green*, 430 U.S. 462, 472 (1977); *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 197, *rehearing denied*, 425 U.S. 986 (1976); *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 756, *rehearing denied*, 423 U.S. 884 (1975) (Powell, J., concurring).

[22] 12 U.S.C. §24 Seventh (1976). Thus, for example, Section 16 provides that a bank "shall not underwrite *any* issue of securities or stock. . . . " *Id.* (emphasis supplied). Exceptions are provided which permit a bank to underwrite certain types of governmental securities, such as obligations of the United States and of state and local governments. This exception has been construed narrowly to limit banks to the underwriting of general obligation instruments only. *See, e.g., Baker, Watts & Co.* v. *Saxon, supra*, 261 F. Supp. at 252. And, Section 16 limits a bank "to purchasing and selling . . . securities and stock without recourse, solely upon the order, and for the account of, customers. . . . " This provision has been construed to permit banks to purchase and sell securities only at the request of *existing* customers, as an accommodation service, and not for profit. *New York Stock Exchange, Inc.* v. *Smith*, 404 F.Supp. 1091, 1097 (D. D.C., 1975), *vacated and remanded on other grounds, sub nom., New York Stock Exchange, Inc.* v. *Bloom*, 562 F.2d 736 (C.A. D.C., 1977), *certiorari denied sub nom., New York Stock Exchange, Inc.* v. *Heimann*, 435 U.S. 942 (1978), *citing*, Bulletin, Comptroller of the Currency, No. 2 (Oct. 26, 1935). *See also*, S. Rep. No. 77, 73d Cong., 1st Sess. 16 (1933).

tion 21 reinforces these proscriptions with an unqualified prohibition, making it unlawful for any person or firm that underwrites, sells or distributes securities to "engage at the same time *to any extent whatever* in the business" of deposit banking.[23]

In *Investment Company Institute* v. *Camp, supra*, 401 U.S. at 625, this Court confirmed that, "[*on*] *their face*, §§16 and 21 of the Glass-Steagall Act appear clearly to prohibit . . ." a bank from sponsoring an investment company because, among other reasons, an investment company (whether or not it is an open-end company, as in the *Camp* case) engages in "buying stock 'for its own account' and . . . 'issuing' and 'selling' 'stock' or 'other securities' evidencing . . . the assets of the fund." *Id.* (footnote omitted). Sections 16 and 21 of the Glass-Steagall Act thus demonstrate, as this Court has held, that "Congress explicitly intended to prohibit a national [or state member] bank from operating an investment trust." *Id.* at 635 (footnote omitted).

B. Commercial Banks are Prohibited Indirectly From Organizing, Sponsoring, or Managing Any Investment Company through Nonbank Affiliates

1. *Banks are Confined to the Business of Banking, and the Securities Business is Expressly Closed to Bank Participation.*

It is axiomatic that the federal banking laws define the business of commercial banking for national and state

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[23] 12 U.S.C. §378 (1976) (emphasis supplied). The purpose of Section 21 of the Glass-Steagall Act was "to make sure that we will accomplish the separation of the investment and deposit banking." 77 Cong. Rec. 4180 (1933) (remarks of Sen. Bulkley). Section 21 does not prohibit banks "from dealing in, underwriting, purchasing, and selling investment securities, or issuing securities, *to the extent* permitted to national banking associations by the provisions of [Section 16]" (emphasis supplied).

member banks,[24] and that the "privileges granted to [such banks] by law" are specifically enumerated by statute.[25] All commercial and industrial activities not expressly permitted to such banks by Congress are necessarily excluded from banking participation.[26] Thus, had Congress spoken no more on the subject, banks would have been excluded from the securities business.[27] Congress has, however, done more than merely fail to authorize bank participation in the securities business; it has affirmatively forbidden such activities.

In the face of these Congressional declarations, the Board has nevertheless attempted to authorize banks to gain a foothold in the securities business by providing investment advisory services to some investment companies, on the basis of a purported distinction between open-end and closed-end investment companies. This distinction, based on the frequency with which the two types of funds issue or redeem their shares, has little basis in fact, and none in law or policy. While it is true that open-end companies can be distinguished from closed-end companies by the manner in which an investor normally

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[24] *See, e.g., Franklin Nat'l Bank* v. *New York*, 347 U.S. 373, 375-376 (1953).

[25] 12 U.S.C. §24 Sixth and Seventh (1976); 12 U.S.C. §341 Sixth (1976).

[26] *See, e.g.*, 77 Cong. Rec. 3835 (1933) (Remarks of Rep. Steagall); *Arnold Tours, Inc.* v. *Camp, supra*, 472 F.2d at 435-436; *Saxon* v. *Georgia Ass'n of Independent Ins. Agents, Inc., supra*, 399 F.2d at 1014; *Baker, Watts & Co.* v. *Saxon, supra*, 261 F. Supp. at 252. *Cf. Transamerica Mortgage Advisors, Inc.* v. *Lewis, supra*, 444 U.S. at 20; *Botany Worsted Mills* v. *United States*, 278 U.S. 282, 288 (1929).

[27] Indeed, as this Court pointed out in *Investment Company Institute* v. *Camp, supra*, 401 U.S. at 629, "[e]ven before the passage of the [Glass-Steagall] Act it was generally believed that it was improper for a commercial bank to engage in investment banking directly."

disposes of his interest in these companies,[28] that is simply not a relevant consideration here. Congress has expressly declared by statute that open-end *and* closed-end companies engage in the *same* general *securities* business activities,[29] and that the management of *any* investment company is an integral part of the securities business.[30]

Not only is the Board's purported distinction between closed-end and open-end funds negated in all material respects by statute, the distinction the Board attempted to draw—focusing on the differences in the way shareholders of the two types of companies may dispose of their shares—is unavailing and unsupportable. Closed-end companies may, and do, issue new shares at any time, just as is true of open-end companies; closed-end funds also

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[28] *See* p. 6 n. 8, *supra*.

[29] Thus, subsections (1) and (3) of Section 3(a) of the Investment Company Act, 15 U.S.C. §§80a-3(a)(1) and 80a-3(a)(3) (1976), define *both* open and closed-end investment companies as those companies engaged "in the *business* of investing, reinvesting, or trading in *securities*" (emphasis supplied).

[30] Section 2(a)(20) of the Investment Company Act, 15 U.S.C. §80a-2(a)(20) (1976), (to which the Board looked in defining the term "investment adviser"), Sections 1 and 2(a)(11) of the Investment Advisers Act, 15 U.S.C. §§80b-1 and 80b-2(a)(11) (1976), and this Court's opinion in *Securities and Exchange Commission* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963), make plain the fact that providing investment advisory services to *any* investment company is an important facet of the "*securities industry.*" *See also, United States* v. *Nat'l Ass'n of Securities Dealers, Inc., supra*, 422 U.S. at 697-698; *Burks* v. *Lasker*, 441 U.S. 471, 480-481 (1979); *E. I. duPont de Nemours & Co.* v. *Collins*, 432 U.S. 46, 54-55 (1977).

may, and often do, offer to repurchase their shares, facts Congress specifically recognized.[31]

In short, the business of *any* investment company is dealing in securities, and the occupation of an adviser to *any* investment company is managing that business. The management of any investment company by a bank necessarily involves the bank in securities activities that are forbidden to banks by the Glass-Steagall Act.

2. *The Prohibitions of the Glass-Steagall Act May Not Be Circumvented by Indirection.*

By the language it employed in the Glass-Steagall Act, Congress left no doubt that the separation it had effected between commercial and investment banking applies broadly to both direct *and indirect* bank securities activities.

Thus, as we have seen, Section 16 of the Act prohibits banks from engaging in "the securities business" except to purchase and sell securities "*solely*" upon the order, and for the account of, customers and "*in no case*" for the bank's own account. By virtue of Section 16, banks are also forbidden to underwrite "*any*" issue of securities. 12 U.S.C. §24, Seventh (1976) (emphasis supplied). Section 21 of the Act prohibits "*any* person" or firm engaged in the securities business from engaging, at the same time,

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[31] *See* Sections 23(b) and 23(c) of the Investment Company Act, 15 U.S.C. §§80a-23(b) and 80a-23(c) (1976), which govern the distribution and *repurchase* of securities by closed-end companies. *And see, e.g.*, H.R. Rep. No. 2639, 76th Cong., 3d Sess. 8, 21 (1940); 86 Cong. Rec. 9811 (1940) (Remarks of Rep. Cole); House Committee on Interstate and Foreign Commerce, *Hearings on H.R. 10065, Investment Trusts and Investment Companies*, 76th Cong., 3d Sess. 124-125 (1940) (Statement of Mr. Schenker); Senate Committee on Banking and Currency, *Hearings on S. 3580*, 76th Cong., 3d Sess. 294 (1940) (Statement of Mr. Smith).

"*to any extent whatever*," in the business of commercial banking. 12 U.S.C. §378(a)(1) (1976) (emphasis supplied).

Moreover, Congress attempted to preclude banks from casually evading the Glass-Steagall Act by establishing stringent penalties against the use of affiliates by banks to engage in activities forbidden to banks themselves. Section 20 of the Act authorizes the imposition of fines against, and the divestiture of the rights of, commercial banks that affiliate "in *any* manner" with companies principally engaged in the distribution or "*public sale*" of securities;[32] the term "affiliate," in turn, is broadly defined in Section 2(b) of the Glass-Steagall Act to include *any* direct or indirect control relationship or common ownership between a bank and a securities firm.[33]

To avoid the improper conflicts of interest that Congress found inevitably arise from the combination of commercial banking and the securities business, Section 32 of the Glass-Steagall Act, 12 U.S.C. §78 (1976), also prohibits *any* "[i]nterlocking managements between national or state member banks and securities firms."[34] Finally, Section 19 of the Act, prior to its repeal in 1966, precluded a bank holding company from voting its stock in a bank if it had "*any* [ownership] interest in," or was "participating" in the management of, a "securities company."[35] As this Court has noted in the context of a

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[32] 12 U.S.C. §377 (1976) (emphasis supplied).

[33] As defined, the term affiliate includes "*any* corporation . . . [or] similar organization" which is a holding company of a member bank, 12 U.S.C. §221a(b)(4) (1976) (emphasis supplied), or which is a subsidiary of a company which owns a member bank, 12 U.S.C. §221a(b)(2) (1976).

[34] Pet. App. 18a-19a.

[35] 48 Stat. 186 (repealed 1966).

companion regulatory scheme, each of "[t]hese proscriptions . . . are broad and, by repeated use of the word 'any,' are obviously meant to be inclusive."[36]

In addition to the plain meaning of these statutory provisions, each must be interpreted bearing in mind Congress' overall *purpose* in enacting the Glass-Steagall Act—to separate commercial banking from the securities business. *See Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 629-630. As this Court there pointed out:

> "[I]n 1908 banks began the practice of establishing security affiliates that engaged in, *inter alia*, the business of floating bond issues . . . . The Glass-Steagall Act confirmed that national banks could not engage in investment banking directly, and in addition made affiliation with an organization so engaged illegal. *One effect of the Act was to abolish the security affiliates of commercial banks.*"[37]

It is apparent from the legislative history of the Act why Congress felt that the "drastic step" of abolishing

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[36] *Affiliated Ute Citizens* v. *United States*, 406 U.S. 128, 151, *rehearing denied*, 408 U.S. 931 (1972). *See also*, *United States* v. *Naftalin*, 441 U.S. 768, 773 (1979).

[37] 401 U.S. at 629 (emphasis supplied; footnote omitted). One of the types of securities affiliates abolished by the Act was affiliated investment companies. In its 1939 study of investment companies, the Securities and Exchange Commission reported to Congress that the Glass-Steagall Act had achieved its objective of precluding bank sponsorship of *closed-end* investment companies, which were the only type of investment company sponsored by commercial banks or their securities affiliates. This abolition was cited by the Commission as one of the "most striking changes in the sponsorship of *closed-end* companies" between 1929 and 1935. Securities and Exchange Commission, *Report on Investment Trusts and Investment Companies*, Pt. 2, H.R. Doc. No. 70, 76th Cong., 1st Sess. 59, 124 (Table 25) (1939) (emphasis supplied).

bank securities affiliates was necessary (401 U.S. at 629). Not only had there been bank failures attributable to the activities of bank securities affiliates, but Congress "was [also] concerned that commercial banks in general and member banks of the Federal Reserve System in particular had both aggravated and been damaged by stock market decline[s] partly because of their direct *and indirect* involvement in the trading and ownership of speculative securities."[38] As noted during the Congressional debates on the Glass-Steagall Act, "[t]he numerous sections of [the Act] are interrelated with a single purpose . . . to sweep away *the whole machinery* of the investment business of member banks . . . ."[39]

In the face of the language of the various provisions of the Glass-Steagall Act described above, the statute's legislative history, and this Court's unambiguous construction of the Act in *Camp*—all evidencing an intent by Congress to prohibit banks from *any* affiliation with entities engaged in the securities business—the Board argues (Br. 19-30) that Section 20 of the Glass-Steagall Act somehow "permits" banks to sponsor closed-end funds through securities affiliates. The board's argument is unavailing.

To begin with, Section 20 contains no *affirmative* grant of authority or permission for banks to do anything, much less for banks to establish affiliates that will serve as advisers to closed-end investment companies. But, Sections 16, 20, 21, and 32, and former Section 19, of the

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[38] *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 630 (emphasis supplied; footnote omitted); S. Rep. No. 77, 73d Cong., 1st Sess. 10 (1933).

[39] 76 Cong. Rec. 1412 (1933) (Remarks of Sen. Metcalf) (emphasis supplied). *Accord*, *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 625-626 n. 12.

Glass-Steagall Act, taken together, as we have seen, *prohibit* banks directly or indirectly from sponsoring or serving as investment advisers to such investment companies. Moreover, the Board's construction of Section 20 conveniently, and understandably, ignores the plain meaning of the statute; Section 20 established severe civil penalties for bank affiliations with companies principally engaged in certain facets of the securities business, including those engaged in the "public sale" of "stocks, bonds, debentures, notes, or other securities . . . ." By statute, Congress defined both closed-end and open-end investment companies as being engaged in the business of publicly selling and buying securities.[40]

In any event, this Court has already rejected the equivalent of the Board's current interpretation of the meaning of Section 20, in *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 625-626 n. 12; there, the Court endorsed the Board's former interpretation (apparently now abandoned to comport with the Board's current litigation strategies) that a separately-structured investment company and its affiliated bank sponsor must be treated as a "single entity" for *all* purposes under the Glass-Steagall Act.[41] As this Court concluded, "there is no danger that to characterize the bank and its fund as a single entity will disserve the purpose of Congress." *Id.* Unfortunately, as this case illustrates, there is every danger that the Board's shifted posture would, indeed, "disserve" and distort "the purpose of Congress."

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[40] In *Camp*, this Court noted that the term "public sale," used in both Sections 20 and 32 of the Glass-Steagall Act, encompasses the same activities included within the purview of the proscription, in Section 21 of the Act, against the "selling" of securities by banks. 401 U.S. at 625-626 n. 12.

[41] 401 U.S. at 625-626 n. 12, *citing* 12 CFR §218.111 (1970).

3. *The Bank Holding Company Act Reinforces the Prohibitions of the Glass-Steagall Act.*

As we have seen, the Glass-Steagall Act prohibits national and state member *banks* from directly or indirectly creating, operating, controlling or managing any investment company, and from being affiliated in any way with any entity that does. In this case, of course, the Board has authorized *bank holding company* affiliates of banks to serve as a vehicle for circumventing these proscriptions against the union of investment and commercial banking. The Board's rule and regulation are valid, therefore, only if the Bank Holding Company Act—pursuant to which the Board purported to act—authorizes the Board to override the express strictures of the Glass-Steagall Act. As we discuss below, however, the Bank Holding Company Act contains no such authorization.

At the outset, it is significant to bear in mind that a principal purpose underlying the addition of the Bank Holding Company Act in 1956 was to supplement and strengthen the Glass-Steagall Act, not to circumvent it.[42] Through the amendments to the Bank Holding Company Act in 1966 and 1970, Congress' essential purpose remained unchanged, as the Board concedes.[43]

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[42] S. Rep. No. 1095, 84th Cong., 2d Sess. 2, *reprinted in* [1956] U.S. Code Cong. & Ad. News 2482, 2483.

[43] *See* 12 CFR §225.125(b) (1980). *And see, e.g.*, S. Rep. No. 1179, 89th Cong., 2d Sess. 2, *reprinted in* [1966] U.S. Code Cong. & Ad. News 2385, 2386 (a purpose of the Bank Holding Company Act is to apply to bank holding companies "the general purposes of the Glass-Steagall Act of 1933"); S. Rep. No. 1084, 91st Cong., 2d Sess. 24, *reprinted in* [1970] U.S. Cong. & Ad. News 5519, 5541 (definition of "bank" in Bank Holding Company Act designed to exclude institutions not engaged in commercial banking); House Committee on Banking and Currency, *Hearings on H.R. 6778*, 91st Cong., 1st Sess. 205 (1969) (J. Robertson, Board Vice-Chairman) ("When Congress has clearly limited the powers of banks, they should not be permitted to circumvent such limitations either through subsidiary corporations or through affiliation in a holding company system.").

Thus, consistent with the Glass-Steagall Act, Section 4(a) of the Bank Holding Company Act, 12 U.S.C. §1843(a) (1976), broadly prohibits bank holding companies from (i) owning the shares of *any* company that is neither a bank nor a bank holding company, and (ii) engaging in *any* activities other than banking or managing a bank. Section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. §1843(c)(8) (1976), the principal reed upon which the Board's contested rule-making was predicated, effects a limited exception from these prohibitions for a bank holding company's ownership of the shares of a company the activities of which are "*so closely related* to banking . . . as to be a *proper* incident thereto." (Emphasis supplied).

On its face, Section 4(c)(8) contains no authority empowering the Board to override the Glass-Steagall Act, or to encourage bank holding companies to engage in the securities business. This is not surprising, since Congress can hardly have been expected to eviscerate the effects of legislation it was attempting to strengthen.[44] Moreover, the significance of this omission is confirmed by the plain language of Section 4(c)(8), which indicates that two distinct tests must be satisfied before the Board may exercise the limited authority it has been given to sanction bank holding company activities other than banking or managing a bank—the activity must be "closely related" to banking, and it must be a "proper incident" to banking.[45]

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[44] *See*, S. Rep. No. 1179, *supra*, at 2; House Committee on Banking and Currency, *Hearings on H.R. 6778*, *supra*, at 13, 205-207 (Remarks of Prof. Berle and Board Vice-Chairman Robertson).

[45] H.R. Rep. No. 1747, 91st Cong., 2d Sess. 19-21, *reprinted in* [1970] U.S. Code Cong. & Ad. News 5519, 5572-5573. This two-tiered test "has been adopted and endorsed by every circuit to consider the question." *See Ass'n of Bank Travel Bureaus, Inc.* v. *Board of Governors*, *supra*, 568 F.2d at 552, and cases cited therein.

But where, as we have seen, Congress expressly made it *unlawful* for national or state member banks to organize, sponsor, or manage *any* investment company, it can neither be "banking," nor "closely related to banking," nor a "*proper* incident" of banking, for banks to avoid these legal constrictions by utilizing nonbank sister companies to organize, sponsor or manage investment companies.

The Board conceded as much itself, in its testimony supporting the 1970 amendments to the Bank Holding Company Act. *Then*, the agency expressed "deep concern" about the "unchecked" increase of one-bank holding companies, because "bank holding companies should be congenerics, not conglomerates." Indeed, the Board acknowledged that the Bank Holding Company Act "*limited*," rather than expanded, the activities of bank holding companies, and "unanimously" concluded then, as the court below does now, that the Bank Holding Company Act "reinforced" the Glass-Steagall Act's "essential" function of "separating banking *and commerce* . . . ."[46]

The Board's contrary assertion now—that the Bank Holding Company Act somehow *authorizes* banks to do indirectly what it is unlawful or improper for banks to do directly—not only flies in the face of the statute, it also proves too much. If the Board's position were correct—which it is not—the Board presumably could authorize banks to sponsor a whole range of securities enterprises, such as brokerage firms, or open-end investment companies, through the vehicle of nonbank sister

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[46] House Committee on Banking and Currency, *Hearings on H.R. 6778*, *supra* at 196 (Statement of W. McChesney Martin, Jr., Board Chairman) (emphasis supplied).

affiliates, a result that would emasculate the very fiber and structure of the Glass-Steagall Act.[47]

In short, if an activity is forbidden to a national or state member bank, it impermissibly exalts form over substance to argue, as the Board does, that Congress intended the same activity to be "closely related" to banking;[48] and, it strains credulity even more to suppose

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[47] The Board argues in its brief (Br. 55) that investment advisory services are "closely related" to banking because "bank trust departments have traditionally organized and managed large collective investment funds such as common trust funds . . . ." As this Court has pointed out, however, while it is not improper for a bank "to pool trust assets, or to act as a managing agent for individual customers, or to purchase stock for the account of its customers . . . the union of these powers gives birth to [an activity] of a different character." *Investment Company Institute* v. *Camp, supra*, 401 U.S. at 625. The first three enumerated activities are, as the Board notes (Br. 55), "conventional fiduciary services"; the last, combined activity, however, is one that is not only not "related to banking," but one which is forbidden to banks. The Board's articulated test is doubly pernicious, however, since it is also a "conventional fiduciary activity" for a bank to purchase and sell securities for the account of a customer as an accommodation service, and the Board's test, if applied as articulated, could permit a bank holding company affiliate to hold itself out to the public as a securities broker. It cannot be gainsaid that banks are prohibited from engaging in such a business, which, *perforce*, cannot be "closely related" to banking.

[48] An activity is "closely related" to banking if "*banks* generally have in fact provided the proposed service," or the services are so inseparably related or similar to the services banks perform that they can only be provided in a specialized form by banks. *Nat'l Courier Ass'n* v. *Board of Governors, supra*, 516 F.2d at 1237 (emphasis supplied); *NCNB Corp.* v. *Board of Governors*, 599 F.2d 609, 613 (C.A. 4, 1979). As this Court indicated in *Mitchell* v. *H. B. Zachry Co.*, 362 U.S. 310, 319 (1960), the term "closely related," when used in other statutory schemes, implies elements of both necessity and close proximity. Since the enactment of the Glass-Steagall Act, banks have not sponsored closed-end funds (Securities and Exchange Commission, *Report on Investment Trusts and Investment Companies, supra*, pt. 2, p. 59; Br. for respondent at 72-73, *citing*, Weisenberger, *Investment Companies Service;* under the circumstances, bank sponsorship of closed-end funds cannot satisfy the stringent elements of the "closely related" test.

that a forbidden activity can be a "proper" incident of banking if pursued through a wholly-controlled or affiliated sister company.[49] Not surprisingly, the Board cites no authority for such a proposition.[50]

C. Relevant Policy Considerations Confirm that Bank Holding Companies May Not Organize, Sponsor, or Manage Closed-End Investment Companies

In *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 630, this Court noted that the "legislative history of the Glass-Steagall Act shows that Congress . . . had in mind and repeatedly focused on the more subtle hazards that arise when a commercial bank . . . enters the investment banking business either directly or by establishing an affiliate to hold and sell particular in-

[49] An activity that violates one provision of law cannot be deemed to be a "proper" activity in which a bank holding company may engage under federal banking law. *Cf. Independent Bankers Ass'n* v. *Board of Governors*, 516 F.2d 1206, 1222 (C.A. D.C., 1975).

[50] The Board argues (Br. 57) that *it* can evaluate whether, in the case of any particular application to sponsor a closed-end fund, the grant of that application can be expected to produce public benefits that outweigh such potential adverse effects as "undue concentration of resources, decreased or unfair competition, or unsound banking practices." But, this argument ignores the fact that, where the securities business is concerned, considerations of "competition, convenience, and expertise" are irrelevant, even where a convincing argument can be made in support of allowing commercial banks to engage in such activities. *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 636.

vestments."[51] After assessing the operation of investment companies by banks in the light of these evils, this Court there concluded that "[t]hose same hazards are *clearly* present when a bank undertakes to operate an investment fund." *Id.* at 636 (emphasis supplied).

Although the plain meaning of the Glass-Steagall Act and the Bank Holding Company Act evidences Congress' intent to bar bank holding companies from serving as investment advisers to closed-end investment companies, and makes resort to the legislative history of the banking statutes unnecessary, a review of the "subtle" dangers the Glass-Steagall Act sought to avert confirms the plain meaning, and applicability, of the statute here, and demonstrates why the Board's regulation and interpretive ruling are inadequate to assure against a repetition of the abuses that led to the adoption of this federal banking legislation.

There can be no dispute, and the Board here concedes (Br. 31-32), that the "conflicts of interest and unsound banking practices of the kind" discussed in *Camp*, and which the Congress sought to proscribe by

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[51] Among other things, the Glass-Steagall Act reflected Congress' express concern that: (i) the close affiliation between banks and their securities affiliates might lead to a loss of public confidence in the bank if the fortunes of the securities affiliate flagged; (ii) banks might attempt to shore up their securities affiliates through unsound and unsafe lending and credit practices; (iii) banks might be inclined to lend their good names to the sales efforts of their securities affiliates; (iv) banks might attempt to spur sales by improperly lending customers funds to invest in securities being sold by bank securities affiliates; (v) a conflict might arise between the promotional incentives of the bank and its securities affiliate, and the need for the bank to render disinterested investment advice to its loan customers; and (vi) the bank securities affiliates might utilize bank trust departments to unload excessive or undesirable securities holdings. *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 629-634.

adopting the Glass-Steagall Act, may be engendered when bank holding companies act as investment advisers to closed-end investment companies. This concession is compelling confirmation of the need for the application of the Glass-Steagall Act here. *Investment Company Institute* v. *Camp*, *supra*, 401 U.S. at 629-636.

Moreover, the force and impact of the Board's concession is, if anything, heightened by the Board's response to these potential "conflicts of interest and unsound banking practices." Rather than accept Congress' determination that any affiliations between the banking and securities industries be prohibited outright, the Board arrogated to itself the power to override Congress' mandate, and adopted a handful of inneffectual, and legally irrelevant, "safeguards" (Br. 31) to restrict some (but by no means all) of the more blatant "conflicts of interest and unsound banking practices."[52]

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[52] The Board's interpretative ruling does nothing to prevent a bank holding company or its bank and nonbank subsidiaries from aggressively promoting the securities in the advisee's portfolio, or from making unsound loans to those companies. For example, the Board's "safeguards" do not protect against imprudent securities investments or lending by bank subsidiaries to those companies whose securities the subsidiary investment company has purchased, and the consequential risk to bank assets. The Board did nothing to prohibit bank subsidiaries from selectively denying credit to competitors of companies whose securities the fund owns. Moreover, the Board did not prohibit a bank subsidiary from using its reputation to recommend or promote particular stocks and securities in the investment company's portfolio, or from making loans to customers to facilitate the purchase of such securities. Nor did the Board prohibit a subsidiary bank from disclosing confidential information about its customers to its affiliated investment adviser. Finally, the Board's ruling would permit a bank to use its resources to achieve the kind of centralized economic power that Congress sought to prevent. The presence of *any one* of these significant problems would be sufficient reason for this Court to affirm the decision of the court below.

But, had Congress sought to authorize the bank regulatory agencies to attempt to develop, in an *ad hoc* fashion, "safeguards" that might (or might not) be sufficient to prevent the abuses with which Congress was concerned, there would be no need now to imply such a remedy: Congress surely knew how to create one expressly.[53] The fact that Congress did *not* vest the Board with such express powers leaves the Board's interpretive release without any predicate in law or policy for attempting to condone illegal conduct by mildly restricting some of the ways in which that illegal conduct can be perpetrated.[54]

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[53] *See, e.g., Touche Ross & Co.* v. *Redington, supra*, 442 U.S. at 572; *Blue Chip Stamps* v. *Manor Drug Stores, supra*, 421 U.S. at 734.

[54] The Board lamely responds (Br. 57) to the court of appeals' conclusion that the same speculative abuses discussed in *Camp* could arise here, by complaining that "[t]he court does not explain why the commercial department of a bank would behave in this way." But, the fact is that "*Congress* feared that banks might even go so far as to make unsound loans" to companies in which their *affiliates* had invested. *Investment Company Institute* v. *Camp, supra*, 401 U.S. at 631 (emphasis supplied). We doubt that the court of appeals owes the Board any further explanation of the rather obvious possibilities for abusive conduct in this area; but, in any event, this Court, in citing the same abuses in *Investment Company Institute* v. *Camp, supra*, surely provided a full and adequate explanation.

CONCLUSION

When Congress enacted the Glass-Steagall Act, it intended to, and did, separate commercial banking from the securities business. Despite this clear mandate, the bank regulatory agencies have repeatedly attempted to encourage or permit banks to encroach into areas of the securities business which the law clearly prohibits. The court below acknowledged this fact and adhered to its clear duty to confine banks to their legitimate activities by declaring the Board's regulations and interpretive ruling invalid. For all of the foregoing reasons, this Court should affirm the judgment of the court below.

Respectfully submitted,

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July 1980

APPENDIX

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June 26, 1980

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600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Re: Board of Governors of the
Federal Reserve System v.
Investment Company Institute

Dear Mr. Pitt:

I hereby consent on behalf of the Investment Company Institute to your filing an amicus brief in the Supreme Court on behalf of A.G. Becker, Incorporated in the case of *Board of Governors of the Federal Reserve System* v. *Investment Company Institute.*

Sincerely,

G. DUANE VIETH

United States Department of Justice
Office of the Solicitor General
Washington, D.C. 20530

May 5, 1980

JAMES H. SCHROPP, ESQUIRE
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& KAMPELMAN
Suite 1000
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Washington, D.C. 20037

Re: Board of Governors of the Federal Reserve System v. Investment Company Institute, No. 79-927

Dear Mr. Schropp:

In response to your letter of April 29, 1980, I hereby consent, on behalf of the petitioner, to the filing of a brief *amicus curiae* on behalf of A. G. Becker Incorporated in this case.

Sincerely yours,

WADE H. MCCREE, JR.
Solicitor General